IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 69 OF 2004

MR.JAIVANT S.KHATKHATE AND ANR., ...Appellants

Versus

MRS.SUNITA G.PRABHU AND 2 ORS., ...Respondents

Mr. M. S. Usgaonkar, Sr. Advocate with Mr. Iftikar Agha, Advocate for the appellants.

Mr. R. G. Ramani, Advocate for respondents No.1 and 2.

Coram:- S.S. PARKAR, J.

Date:- 11th August, 2005

P.C.:

This appeal is filed challenging the order dated 24.8.2004 passed by the Civil Judge, Sr. Division, Panaji in Inventory Proceedings No.90/2000/A. The only objection to the impugned order is that when the property at item No.1 was already listed as per Articles 1377 and 1378, there was absolutely no necessity of issuing direction to that effect to the Cabeca da Casal i.e. the appellant No.1 herein.

2. Learned Counsel on behalf of respondents No.1 and 2 states that the objection is to the bracketed portion of Exhibit "D", in which mention is made about Will dated 22.11.1974 bequeathing the property in favour of late Shri Digambar Sitaram Khatkhate. It is argued that it should not mean that the heirs of the deceased cannot claim any right to the said property, as in case of a will half of the property will go to the legatee and other half will be distributed amongst the heirs of the deceased. That position is not disputed on behalf of the appellants. The learned Counsel for the appellants states that this question was not raised before the trial Court. But he does not object to keeping the question open

for consideration.

3. In view of the above, the objection raised on behalf of the appellants is not without substance. The order directing the appellant No.1 to list the property at item No.1 was unnecessary, as the property was already listed as per the relevant provisions. The mention of the will in respect of the said property will not affect the rights of the heirs to apply for their share as per law.

4. With the aforesaid clarification, this appeal shall stand disposed of.

S.S. PARKAR, J.